

O-312-18

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION Nos.

3139254, 3139258 and 3139259

IN THE NAME OF WAL-MART STORES, INC.

TO REGISTER THE FOLLOWING TRADE MARKS IN CLASS 25

1) TAILOR AND CUTTER



**AND OPPOSITION THERETO UNDER OPPOSITION NOS 406281-3 BY TAILOR
AND CUTTER (CAMBRIDGE) LIMITED**

AND

IN THE MATTER OF TRADE MARK REGISTRATION Nos.

3003551 and 3003552 FOR THE MARKS



1)

2) TAILOR AND CUTTER

STANDING IN THE NAME OF WAL-MART STORES, INC.

AND

AND AN APPLICATION FOR INVALIDATION THERETO UNDER NOS. 501557&8
JOINTLY BY ANDREW CAMPBELL JACKSON, TAILOR AND CUTTER LIMITED
and TAILOR AND CUTTER (CAMBRIDGE) LIMITED

AND

IN THE MATTER OF TRADE MARK APPLICATION NO. 3122696
IN THE NAME OF TAILOR AND CUTTER (CAMBRIDGE) LIMITED

TO REGISTER THE FOLLOWING TRADE MARK IN CLASSES 14 AND 25:

TAILOR & CUTTER
TAILOR AND CUTTER (series of two)

AND OPPOSITION THERETO UNDER NO. 407960
BY WAL-MART STORES, INC.

Background and pleadings

1. These consolidated proceedings concern:

(a) Oppositions 406281-3 by Tailor and Cutter (Cambridge) Limited ('T&C') against applications 3139254, 3139258 and 3139259 all filed on 4 December 2015 by Wal-Mart Stores, Inc. ('Wal-Mart') to register the following marks all in Class 25:

(i) word mark 'TAILOR & CUTTER',



(ii) (series of two), and



(iii) (series of two)



The earlier relied upon mark is for 'TAILOR & CUTTER' and 'TAILOR AND CUTTER' (series of two). The applications are also opposed on the basis of an alleged common law right in a business operating under the term 'TAILOR & CUTTER'.

(b) Invalidity application numbers 501557 and 501558 by joint applicants Andrew Campbell Jackson, Tailor and Cutter Limited and T&C ('joint T&C applicants') to invalidate Wal-Mart's trade mark numbers 3003551 'TAILOR & CUTTER'



and 3003552. The invalidation actions are based on its alleged

associated common law rights in a business operating under the term 'TAILOR & CUTTER'.

(c) Opposition no. 407960 by Wal-Mart against trade mark application no 3122696 for the mark TAILOR & CUTTER which was filed on 17 August 2015 by T&C in classes 14 and 25. The grounds of opposition are that (a) the mark is devoid of any distinctive character, (b) the mark is descriptive, (c) the mark is customary in the trade, (d) the application was made in bad faith (this bad faith claim was withdrawn at the hearing so nothing further shall be said about it), and (e) it is identical/similar to the opponent's earlier trade mark registration no. 3003551 TAILOR & CUTTER in class 25.

2. The respective parties filed counterstatements denying the grounds of opposition and invalidation put forward by the other party.

Representation

3. A hearing was held on 20 March 2018 at which Mr Iain Purvis QC, instructed by Appleyard Lees IP Ltd, appeared as counsel for Wal-Mart and Mr Tom St Quinton, instructed by Maguire Boss, appeared as counsel for Mr Jackson, T&C and T&C joint applicants.

The evidence

Mr Jackson and T&C joint applicant evidence

Witness statement of Andrew Jackson

4. Mr Jackson is the sole director of the joint applicants. He was also sole director of the now dissolved UK company Rose Crescent Tailoring Limited, previously called Tailor and Cutter Limited. Mr Jackson, alongside his wife, is also a director of UK Franchise Limited.

5. Exhibit AJ1 to his statements consists of Company House extracts relating to the companies which Mr Jackson has been a director. He provided the following table:

Company No	History
03318039	13/02/1997: incorporated under the name 'Tailor & Cutter Limited'. 15/04/2011: changed name to 'Rose Crescent Tailoring Limited'. 27/09/2011: Dissolved
05776185	10/04/2006: incorporated under the name: 'UK Franchise Limited' 08/09/2011: changed name to 'Tailor & Cutter Limited'
05775382	10/04/2006: incorporated under the name 'Tailor & Cutter (Cambridge) Limited'
09273842	21/10/2014: incorporated under the name 'UK Franchise Limited'

6. Mr Jackson states that since 1997, whether operating as a sole trader or through one of the above mentioned companies, he has made significant and continuous use of the trade mark TAILOR & CUTTER throughout the UK for high quality bespoke tailoring services, high quality bespoke-tailored clothing, including suits, shorts, jackets and tuxedos, jewellery, fashion accessories, and associated retail services.

7. Mr Jackson states that he has sold over £1.75 million worth of TAILOR & CUTTER branded garments to date, and provides the following breakdown of turnover figures:

Year	Turnover (inc. VAT)	Company/Undertaking
2003	£95,113	Tailor and Cutter (Sole Trader)
2004	£137,294	Tailor and Cutter (Sole Trader)
2005	£163,278	Tailor and Cutter (Sole Trader)
2006	£115,439	T&C
2007	£218,128	T&C
2008	£174,831	T&C
2009	£119,291	T&C
2010	£101,893	T&C
2011	£90,600	T&C

2012	£92,617	Tailor and Cutter (Cambridge) Ltd
2013	£95,209	Tailor and Cutter (Cambridge) Ltd
2014	£89,592	Tailor and Cutter (Cambridge) Ltd
TOTAL:	£1,499,295	

8. Exhibit AJ2 consists of a Natwest bank paying in slip for 'Mr A C Jackson trading as Tailor & Cutter'. Mr Jackson states that it is clearly from the 1990s since the section of the paying-in slip where the year is to be entered reads '19__'.

9. Exhibit AJ3 comprises of Whois reports for the domain names 'tailorandcutter.co.uk' and 'tailorandcutter.com'. They indicate that the domains were registered in 1999 and are in the name of Tailor and Cutter (Cambridge) Limited.

10. Exhibit AJ4 to the witness statement consists of a number of historical internet extracts obtained from the Wayback Machine dated between 2005 and 2015. The web page includes the heading 'TAILOR & CUTTER' with 'Bespoke Tailors & Shirtmakers' below it. The text on the web page states 'Tailor and Cutter are pleased to offer a full range of personal Tailoring Services for Gentlemen...We are also able to offer a world renown short making service and a large selection of gentlemen's accessories.'

11. Exhibit AJ5 consists of a selection of invoices from a fabrics company called Ringhart Fabrics London addressed to 'Tailor & Cutter' in Peterborough. They are dated 1999, 2003, 2005, 2007 and 2012 and for relatively low amounts (ranging from £16.33 to £161.40).

12. Exhibit AJ6 consists of invoices from 2008, 2010 and 2012 in respect of the rent due on the Rose Crescent and All Saints premises. The 2010 invoice relates to 17 Rose Crescent and is for advanced payment for the quarter March to June 2010. Therefore, it is for a period prior to the dates given below, though this does not make any material difference. Mr Jackson advises that the various premises he has occupied are as follows:

- 37 Broadway, Peterborough (1997 – 2006)
- 11a High Street, Stamford (2003 – 2009)

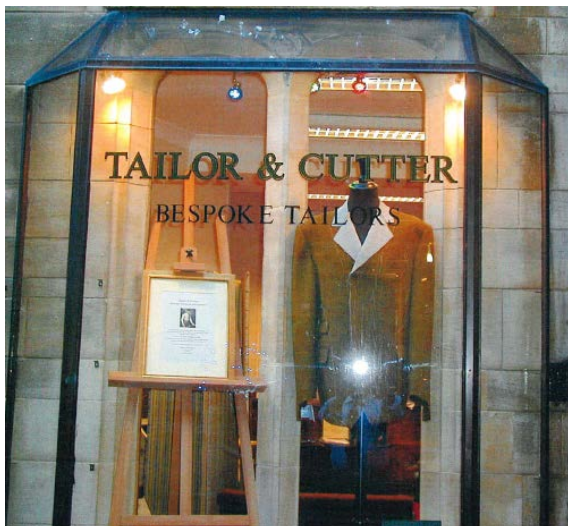
- 17 Rose Crescent, Cambridge (2011 – present)
- 7 All Saints Passage, Cambridge (2011 – present)
- 63 High Street, St Martins, Stamford (2015 – present)

13. To corroborate the above, Mr Jackson has submitted copies of landlord and character references written by third parties and invoices from the various landlords.¹

14. Exhibit AJ8 contains photographs of the 'Tailor and Cutter' shops in Cambridge. These are reproduced below:



11a High Street, Stamford (photo taken in 2009)



Rose Crescent, Cambridge (photo taken in 2010)

¹ Exhibits AJ6 and AJ7

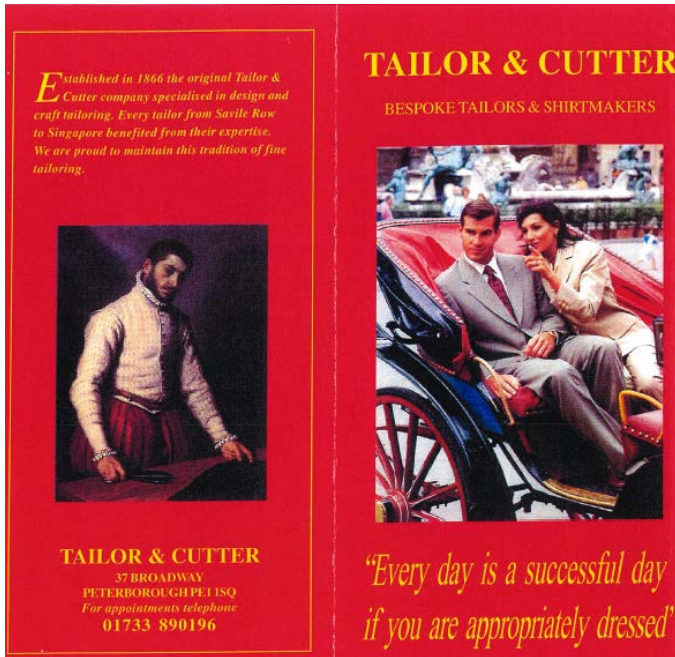
15. Exhibit AJ9 comprise of three invoices all from Barker Signs to Tailor and Cutter. The first is dated 30 June 2003 and addressed to 36 Broadway for 'Signwrites'. The second is dated 30 January 2007 and addressed to Tailor & Cutter at 11a High Street for 'Signwrite'. The last invoice is dated 14 December 2009 addressed to 17 Rose Crescent to supply and fit lettering to a window.

16. Exhibits AJ10 consists of Yellow Pages entries for the Cambridge edition for the period 2000-2015. Exhibit AJ11 also consists of Yellow Pages entries but these are for the Peterborough edition for the period 1997-2015. To corroborate the advertisements, Mr Jackson submits under exhibit AJ12 confirmation of payment to Yellow Pages. Whilst the address changes, the advertisements generally appear as follows:



17. Further advertising includes a leaflet² (as reproduced below) which it says was in use from 1997 to 2006. The cover of the leaflet also appears on the website. No circulation or website visit figures have been provided.

² Exhibit AJ13



18. Exhibits AJ14 consist of copies of advertisements that appeared in 'STAMFORD LIVING' dated October 2006. Exhibit AJ15 is a compliment slip and a copy of terms and conditions. Both include the non-stylised words TAILOR & CUTTER and neither are dated.

19. Exhibit AJ16 consists of photographs of labels as they appear on some clothing and cufflink boxes. They are not dated and Mr Jackson states that 'not every customer chooses to have a pocket label, but most jackets would include one'.



20. Mr Jackson states that it would take over 40 hours to make a high quality bespoke-tailored man's suit since it would be carefully measured.³ He also states that he offers a visiting service whereby a tailor would travel to meet the customer. Mr Jackson refers to the Yellow Pages advertisements which offer 'Home visits' and under exhibit AJ18

³ Exhibit AJ17 is an undated example of a Customer Measure Sheet'

21. Mr Jackson then states that his business had been damaged by Asda's use of the term TAILOR & CUTTER (Asda's being a subsidiary of Wal-Mart).

22. Mr Jackson states that there have been numerous instances whereby his business has been associated or considered to be part of Asda, and therefore part of Wal-Mart.

23. He states that on 4 April 2015 he received two telephone calls from separate customers asking whether they still held 'a particular stock item?', which transpired to be from Asda's Tailor and Cutter range. He subsequently contacted Asda's professional representatives in order to resolve the matter.

24. Exhibit AJ20 to his witness statement is a 'log' of incidents occurring between 4 April 2015 and 15 September 2015 where customers or members of the public have mistakenly believed that there was a connection between his companies and Asda.

25. The log consists of 9 stock enquiries (either via the telephone or a shop visit), three alteration enquiries, two sarcastic comments about Asda, two comments about selling the same products, one asking if they are connected to Asda and one asking 'should he make the cheque out to Asda?'

26. ExhibitsAJ21 includes an email from a Mr Christopher Wilson which is duplicated as follows:

From: Christopher Wilson [REDACTED] **Sent:** Thu 30/04/15 12:37
To: "enquiries@tailorandcutter.co.uk" <enquiries@tailorandcutter.co.uk> **Priority:** Normal
Subject: Purple Ties **Type:** Embedded HTML/Text

Dear Sir / Madam,

I recently purchased a quantity of purple ties with white spots through George at Asda's on-line. I am trying to purchase some more but cannot find the product on their website. Are you still supplying this item to Asda's or can I purchase them directly from you if you are still manufacturing them.

The details are

[REDACTED]

Thanking you for your assistance in this matter.

Christopher Wilson.

27. The text of the email states 'I recently purchased a quantity of purple ties with white spots through George at Asda's on-line. I am trying to purchase some more but cannot find the product on their website. Are you still supplying this item to Asda's or can I purchase them directly if you are still manufacturing them.'

28. Exhibit AJ22 consists of an email from a Mr Peter Edwards, as follows:

----- Original Message -----

From: Peter Edwards [REDACTED]
To: "enquiries@tailorandcutter.co.uk" enquiries@tailorandcutter.co.uk
Sent: Wed 29/07/15 09:54
Subject: Fwd: Tailor & Cutter
Hi Andrew,

Just a quick note, to say how happy I am with the shirts and jacket.

I was very surprised to notice that Asda have a brand of Tailor & Cutter... This is not good for you or your brand.

Best wishes

Peter

Peter Edwards.

29. Mr Jackson states that these are clear instances of deception as a result of the misrepresentation between the signs used by the respective companies. He goes on to state that his business has already been damaged since he lost the top internet search listing for 'TAILOR & CUTTER' to Asda. Further, given the difference in costs for the items of clothing, he claims that his brand is being devalued or tainted. Under exhibit AJ19 Mr Jackson submitted a number of web pages from Asda showing its TAILOR & CUTTER range. They show that trousers typically cost £10 to £15.

Witness Statement of Iain Milligan

30. Mr Milligan is Managing Director of Huddersfield Fine Worsteds Ltd, a position he has held since May 2013. He states that his company has traded as a cloth merchant since 1887 who supply many of the world's most prestigious tailors and design houses. He states that the company holds a Royal Warrant of Appointment to

Her Majesty the Queen. Exhibit IM1 to his witness statement is a copy of the details of the companies Royal Warrant. Mr Milligan states that his company have dealt with Andrew Jackson and his 'Tailor & Cutter' companies for many years and that his company's current computer statement was introduced in 2006 and the first recorded invoice was dated 10 January 2006, though he knows that they have been dealing with them for longer. No copy of the aforementioned invoice, or any other invoice, has been submitted as evidence.

31. He also states that he does not know of, or trade with, any other company known as Tailor & Cutter and believes that this sign 'is distinctive of Andrew Jackson and his 'Tailor & Cutter' companies, including Tailor & Cutter (Cambridge) Limited'.

Witness statement of Paul Towler

32. Mr Towler is the Managing Director of Roy W Towler Ltd, a position he has held since 1991. He states that his company are a wholesale supplier of men's clothing accessories, such as cufflinks, bow ties, tie clips and high end men's braces. Mr Towler states that he has known the trade mark 'TAILOR & CUTTER' since 1997/1998 and that it is used by the joint T&C applicants. No specific details regarding any business dealings between the respective companies have been provided.

Witness statement of Robert V Collins

33. Mr Collins is the former owner of the cloth supplier Bateman Ogden & Co Limited ('Bateman'), a position he has held between 1986 and February 2016. He states that Bateman was established as a textile firm in 1881 and incorporated in 1952. He claims that Bateman produced fabrics for British soldiers in WWI, for use at the London 2012 Olympic Games and that they are one of the most highly regarded names within the international tailoring industry.

34. He states that he has been aware of use of the trade mark 'TAILOR & CUTTER' by the joint T&C applicants for approximately 20 years. He regards the trade mark

'TAILOR & CUTTER' as indicating goods and services originating from the joint applicants, and any use by third parties is likely to cause confusion.

Witness statement of James Dunsford

35. Mr Dunsford is the managing director of Lear Browne & Dunsford Limited, a position he has since 2000. He states that the aforementioned company commenced trading in 1895, in Exeter. In 1973 the company became incorporated but continues to be managed by the Dunsford family. He states that Lear Browne & Dunsford Limited are suppliers to the joint T&C applicants and that they have dealt with Andrew Jackson and Tailor & Cutter (which he has collectively known as Tailor & Cutter) for at least 20 years.

36. Mr Dunsford states that any use of the 'TAILOR & CUTTER' mark by anyone other than the joint applicants 'would be incredibly confusing and something which would be of great annoyance'.

Wal-Mart's evidence

37. The evidence filed by Wal-Mart consists of two witness statements both in the name of Mr Anthony Paul Brierley, the professional representative for Wal-Mart. The second witness statement incorporates most of the first witness statement but has additional text and exhibits. Therefore, rather than summarise the witness statements separately, I shall review them collectively.

38. Mr Brierley is a patent and trade mark attorney for Appleyard Lees IP Ltd, Wal-Mart's professional representatives.

39. Exhibit APB1 to Mr Brierley's witness statement comprises of extracts from the Collins English Dictionary. The extract defines 'tailor' as being, *inter alia*, 'a person who makes, repairs or alters outer garments, esp. menswear' and 'cutter' as, *inter alia*, 'a person or thing that cuts esp. 'a person who cuts cloth for clothing'.

40. The exhibit also includes separate Wikipedia entries for 'tailor' and 'cutter'. Mr Brierley specifically highlights a tailor as being described as 'a person who makes, repairs, or alters clothing professionally, especially suits and men's clothing' and 'A cutter cuts out, from lengths of cloth, the panels that make up a suit. In bespoke tailoring, the cutter may also measure the client, advise them on style choices, and commission craftsmen to sew the suit'.

41. Also within the exhibit is an extract from angelasancartier.net/cutting which is headed 'Encyclopaedia of clothing and fashion' and outlines the role of the cutter, i.e. cut cloth to suit the individual requirements of the wearer. Whilst the article only includes the date of printing, 8 November 2016, it does refer to the historical context of tailors and cutters and states that the Oxford English Dictionary's first recorded reference to the word tailor was made in 1927 and that there have not been any major changes in the process of cutting traditional tailored garments since the sixteenth century.

42. Another article filed under exhibit APB1 is headed 'Cutting Fabric for Fashion' by Alan Cannon Jones. It is not dated. During the hearing Mr St Quinton highlighted that this article appears to be the same as the Wikipedia entries above and is therefore the view of one person rather than two separate entries.

43. The final article filed under exhibit APB1 is headed 'How bespoke tailors work' and is dated 7 March 2012. The article states that 'cutters and tailors may overlap, but they will be responsible for very different things when it comes to your suit'.

44. Exhibit APB2 consists of an extract from the gov.uk website which outlines the 'Apprenticeship standard: bespoke tailor and cutter' and 'Occupation: Bespoke Tailor and Cutter'. It states that the article was first published on 21 August 2015 which (as highlighted by Mr St Quinton) is after the relevant date. Mr St Quinton also argues that the apprenticeship comprises of mandatory core skills and knowledge with a choice of specialising in either role. Mr Purvis argues that the apprenticeship standard puts the two professions directly together for obvious reasons. I agree with Mr Purvis. The mere fact that there is an apprenticeship for 'bespoke tailor and

cutter' and the title states that the occupation is tailor and cutter clearly recognises the respective skills as being complementary to one another.

45. Mr Brierley highlights that 'The standard for a bespoke tailor and cutter was developed by: Henry Poole, Anderson & Sheppard, Dege and Skinner, Gieves and Hawkes, Chittleborough and Morgan, Norton and sons, Welsh and Jeffries, Richard Anderson, Meyer and Mortimer, Kathryn Sargent, Davies and Son and Lutwyche'. Mr Brierley attaches website extracts from the aforementioned companies. Of them, there are some references to tailor and cutter. More specifically, the 'Chittleborough & Morgan' website (extract dated 14 November 2016) refers to them as 'The Cutters and Tailors'.

46. The extract from Meyer & Mortimer is dated 26 February 2016 and asks 'what is the difference between a cutter and a tailor'. The website states 'So how does it work? Well tailoring is split largely into two main areas: there's your tailors – who makes the garments, then there's your cutter'. There are numerous references to tailors and cutters in the extracts.

47. The extract from Richard & Anderson's website states that they welcome visitors to its showroom 'where you will find the cutters and tailors working'. The print out is dated 14 November 2016 but it does show a reference to 'Autumn/Winter 2015/16'.

48. Finally, the extract from the Davies and Son page is headed 'Meet the team' and refers to a Mr Alan Bennett as a 'Master Tailor and Cutter'. The article is not dated but it does state that in August 2015, Mr Bennett will be celebrating 50 years tailoring.

49. Exhibit APB3 consists of print outs from forums, the first is headed 'The Cutter and Tailor Forum – a forum devoted to the revival of the art of tailoring' and includes numerous references to various forums which discuss 'tailor & cutter'. The majority of posts on the various forums are dated 2016.

50. Exhibit APB4 consists of numerous articles, many of these refer to the Tailor and Cutter magazine which was published on a weekly basis from when it was

established in 1866 until it ended in 1971. An undated article from daviesandson.com describes the magazine as ‘...the magazine for the bespoke trade for more than 100 years’. Mr St Quinton argues that this is a defunct publication and is therefore not relevant. However, there are more recent references to the Tailor and Cutter magazine, including an article dated 30 December 2011 from permanentstyle.com which refers to ‘The Tailor & Cutter – Politicians’ and includes a picture of the Tailor and Cutter magazine front cover. Further extracts filed under this exhibit are either very old, for example an extract from erimusgrave.co.uk refers to and shows the cover of a Tailor & Cutter magazine from 1960⁴, or taken from other countries such as a Tailor and Cutter magazines being available in Australian⁵ and Canadian⁶ libraries.

51. Exhibit APB5 consists of references to the Tailor & Cutter Academy which was based in London but ceased trading. It is not clear when the Academy ceased trading. The exhibit also includes a Wikipedia entry about the British tailor, Tommy Nutter. It states that at aged 19 (in 1962) he studied at the ‘Tailor and Cutter Academy’ in Willesden, London. Once again Mr St Quinton highlights that the entity which this exhibit originates is now defunct.

52. Exhibit APB6 includes numerous references to books which have ‘Tailor & Cutter’ in the title and are available to buy. However, these are⁷ of little relevance since many refer to the ‘American Tailor & Cutter’ and therefore have little bearing on the position in the UK. Another book is entitled ‘The Tailor and Cutter and London Art Journal’ which is being sold on eBay in the UK (this can be assumed since the cost of the book is in pounds sterling). There is no indication of when the book was published and the extract is after the relevant date. The exhibit also includes books being sold via Amazon which incorporate ‘Tailor & Cutter’ in the title. The cost of the books are in sterling. The remaining books which incorporate Tailor and Cutter are either undated or date back to the early 1900s. Therefore, these are not useful when considering the position at the relevant date.

⁴ Exhibit APB4

⁵ Pages 22-25 of exhibit APB4

⁶ Pages 26 & 27 of exhibit APB4

⁷ Exhibit APB2

53. Exhibit APB7 includes examples of people who refer to themselves as being a 'Tailor and Cutter'. An extract from davidetaub.blogspot.co.uk is dated 19 May 2016. The exhibit includes an extract from Malcolm-plews.co.uk/about-new/ which describes Malcolm Plews as a 'veritable master tailor and cutter'. The article is undated except for the copyright date of 2016.

54. Exhibit APB8 consists of an article from The Independent newspaper dated 23 April 2011. It refers to a Mr David Coulthard as a 'Master tailor and owner of Tom Brown tailors, Eton' of more than 40 years. The exhibit also includes an article from Eastern Daily Press dated 24 February 2012 which refers to a gentleman called Tony who is a 'master tailor and cutter'. The final article under cover of this exhibit is from Asia Society and it is headed 'Interview: Meet Ghani Chaudry, the Pakistani Tailor who conquered Saville Row'. Mr Choudry is described as a Lahore-born master tailor/cutter' who has worked on Saville Row for 14 years and provided his tailoring expertise for numerous television shows.

55. Exhibit APB9 consists of labels which would have been used by various tailors. There is no reference to 'tailor and cutter'.

56. Exhibit APB10 comprises of trade mark register prints for various tailors who have obtained trade mark registrations. Mr Brierley has filed this evidence in an attempt to indicate that tailors which register goods in class 25 (clothing) also apply for registration in class 14 for clocks, watches, jewellery, etc.

57. Exhibit APB11 to the witness statement consists of print outs from various tailors' websites which show that whilst they offer tailoring services they also sell in-store items such as jewellery and particular emphasis was placed on cufflinks.

58. Exhibit APB12 consists of various website print outs from retailers (including Next and Burtons) showing shirts. The print outs are aimed at demonstrating that shirts are often sold alongside or as a set with cufflinks or collar pins.

59. Exhibit APB13 comprises of various website print outs which are aimed at demonstrating that watches, in particular pocket watches, are sold alongside items of clothing, for example waistcoats. The extracts are from websites for companies called The Pocket Watch Waistcoat Company, Tom Sawyer Waistcoats and Asos (a large online retailer).

Witness statement of Graeme Morrison

60. Mr Morrison is a senior lawyer (commercial and trading) at Asda Stores Limited. Mr Morrison's witness statement seeks to demonstrate that Asda's brand George has a large reputation for clothing. This is not in dispute. The evidence is filed to support the argument that since application no. 3139259 (the subject of opposition no. 406282) includes 'SHOP ONLINE AT www.george.com' this supports its s.5(4)(a) claim. A full assessment of Mr Morrison's evidence is not necessary. I accept that George is a highly recognisable brand with a reputation for being an Asda range of clothing.

61. That concludes a summary of the evidence as far as I feel necessary.

INVALIDITY NUMBERS 501557 AND 501558

DECISION - Section 5(4)(a) – passing off

62. At the hearing both parties were in agreement that the first and potentially critical claims to be decided are the invalidation actions based on the law of passing off. Section 5(4)(a) of the Act, applicable in these proceedings by virtue of Section 47, states:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

Case law

63. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court stated that:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56 In relation to deception, the court must assess whether “*a substantial number*” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

64. Halsbury’s Laws of England Vol. 97A (2012 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 309 it is noted (with footnotes omitted) that:

“To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

(a) the nature and extent of the reputation relied upon;

(b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;

(c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;

(d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances."

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action."

Relevant date

65. In *SWORDERS TM* O-212-06⁸ Mr Allan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’

66. The registrations in question were filed for registration on 25 April 2013. Therefore, this is the relevant date for which the s.5(4)(a) claim is to be assessed.

Summary of claim

67. I remind myself of the basis of the invalidation claims. In essence, Mr Jackson and the T&C joint applicants all claim to have ownership of goodwill associated in a business operating under the term ‘TAILOR AND CUTTER’. This use has been throughout the UK since 1997 for clothing, suits, shirts, jackets, tuxedos, jewellery, fashion accessories, tailoring services and retail services relating to clothing, suits, shirts, jackets, tuxedos, jewellery and fashion accessories.

GOODWILL

68. Wal-Mart argues that there two fundamental flaws in Mr Jackson and T&C joint applicants’ passing off claim. Firstly, it questions the ownership of the goodwill on the basis that, since no assignment occurred, then the parties may only rely upon any goodwill accrued individually rather than collectively. Secondly, Wal-Mart argues that

⁸ Endorsed by Mr Daniel Alexander QC, sitting as the Appointed Person, in *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11

it is not possible to accrue common law rights to the descriptive term TAILOR & CUTTER.

69. The commonly accepted definition of goodwill was in *IRC v Muller & Co's Margarine Ltd* [1901] AC 217 Lord Macnaghten whereby it stated:

"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has power of attraction sufficient to bring customers home to the source from which it emanates. Goodwill is composed of a variety of elements. It differs in its composition in different trades and in different businesses in the same trade. One element may preponderate here and another element there. To analyse goodwill and split it up into its component parts, to pare it down as the Commissioners desire to do until nothing is left but a dry residuum ingrained in the actual place where the business is carried on while everything else is in the air, seem to me to be as useful for practical purposes as it would be to resolve the human body into the various substances of which it is said to be composed. The goodwill of a business is one whole, and in a case like this it must be dealt with as such. For my part, I think that if there is one attribute common to all cases of goodwill it is the attribute of locality. For goodwill has no independent existence. It cannot subsist by itself. It must be attached to a business. Destroy the business, and the goodwill perishes with it, though elements remain which may perhaps be gathered up and be revived again."

OWNERSHIP OF GOODWILL

Background

70. The applicant's position is that Mr Jackson has either operated as a sole trader or as a director of the various relevant companies. Prior to 2006 he was a sole trader, then between 2006 and 2011 he operated the business under the name 'Tailor & Cutter Limited' and then from 2011 to the relevant date under the term Tailor and Cutter (Cambridge) Limited. Mr Jackson has been the constant presence throughout. There is no evidence that any transfer or assignment of any goodwill was made from, or between, Mr Jackson and any of the limited companies. The applicant argues that at some stage there was a transfer but this was not formalised. Notwithstanding this, it argues, Mr Jackson states that he 'has at all times been the human agent behind the business'⁹. During the hearing Mr St Quinton argued that there are a number of factors to demonstrate the transfer of goodwill, these being i) the turnover figures provided which show T&C being the 'Company/Undertaking' from 2006 until 2011 and then T&C (Cambridge) from 2011 onwards, ii) in 2008 the rent invoice for 17 Rose Crescent in Cambridge was for Mr Jackson, then another rental invoice for the same address was issued to Andrew Jackson Tailor and Cutter in 2010 and then in 2012 an invoice was addressed to Tailor and Cutter (Cambridge) Limited but this invoice related to premises at 7 All Saints Passage (Cambridge) and not Rose Crescent.

71. To further support the transfer of business (and by inference any goodwill) is the change of ownership details for the domain name tailorandcutter.co.uk

72. Notwithstanding whether goodwill was transferred between the respective companies, Mr St Quinton states that it is not necessary to identify which party owns goodwill since they must own it between them and collectively they are the applicants for invalidation.

⁹ Paragraph 12 of Mr St Quinton's skeleton argument

73. Mr Purvis, on behalf of Wal-Mart, argues that T&C (Cambridge) are the only entity which may claim ownership to any goodwill. This goodwill (if it existed at all) would be for the period between 2012 and 25 April 2013. He states that 'Mr Jackson cannot rely on any personal goodwill associated with his trading name prior to 2006' since it could not have survived separately alongside a different legal entity. He also states that in the absence of evidence that an assignment occurred, any goodwill generated by T&C would have been abandoned or passed to the crown in 2011.

74. There is no evidence of assignment between the various entities and it was not suggested that any formal assignment ever took place. Either Mr Jackson was not aware of assignments of business and goodwill, or he did not consider goodwill in the name 'Tailor and Cutter' to exist. Nevertheless, since 2006 there was a shop in Cambridge called 'Tailor and Cutter'. In 2011 the Tailor and Cutter premises were moved to a nearby location in Cambridge, but to the relevant consumer, particularly in Cambridge, it is a continuation of business and this cannot be considered to be relinquishment of any goodwill.

75. The application for invalidity is a joint application filed by Mr Jackson, T&C and T&C (Cambridge) limited. Whilst Mr Jackson is a director of the limited companies, they have all effectively joined forces in order to invalidate Wal-Mart's registrations. They all claim to have some form of goodwill in a business operating under the term 'Tailor & Cutter'. Whether goodwill has been established is yet to be decided but there is no question that Mr Jackson and T&C joint applicants between them owned any goodwill that did exist. Given the nature of the business and Mr Jackson's professional and public role in it, I am prepared to accept that any goodwill owned by T & C in 2011 (when T & C Cambridge appears to have become the trading vehicle) would have included the benefit of any goodwill generated by Mr Jackson as a sole tradesman prior to the incorporation of T & C in 2006. T & C Cambridge appears to have carried on the business run operated initially by T & C from two addresses in Cambridge since 2010/11. There therefore appears to have been a de facto and consensual transfer of an on-going business from T & C to T & C Cambridge. In

these circumstances I am prepared to infer that the goodwill of the former will have passed to the latter along with the on-going business.¹⁰

76. In view of the above, I find that applicant's for invalidation may jointly rely upon any goodwill that T & C Cambridge and/or Mr Jackson owned at the relevant date.

Can goodwill be accrued in the name Tailor and Cutter?

77. This is the real crux of this dispute. Is use of the term Tailor and Cutter by Mr Jackson and T&C joint applicants in relation to a tailoring business capable of accruing goodwill which could give rise to deception amongst a significant number of the relevant public which could lead to damage.

78. During the hearing Mr Purvis referred to the decision of *Diageo v Intercontinental Brands* [2011] RPC 2 whereby it stated at paragraph 24 (his emphasis is added):

*'There is no general law against unfair competition. The law rapidly rejected the notion that a manufacturer could sue to protect a right of property in his mark and instead concentrated on the goodwill which his business had established. This has particular consequences in relation to a mark or product name which is essentially descriptive. In cases of classic passing-off the use of a purely descriptive term to describe the claimant's business will not usually prevent a defendant from using the same name unless the claimant **can show** that the words in question have acquired a secondary meaning or have become **synonymous with its business and that business alone. The more general and descriptive the name is, the more difficult it will be to establish the reputation and goodwill** of the claimant in that term and the existence of a misrepresentation by the defendant in its use of the same name.'*

¹⁰ See paragraph 3-220 of Wadlow's Law of Passing Off: Unfair Competition by Misrepresentation 5th Ed.

79. Mr Purvis emphasised that the two statements in bold are conjunctive statements which are essentially themselves synonymous. He said that ‘When one talks about a secondary meaning, one means something which has become synonymous with the claimant’s business and that business alone.’

80. Mr St Quinton argued that a low level of trade can lead to a goodwill capable of being protected under the law of passing off. He referred me to the cases of *Advanced Perimeter Systems Ltd v Keycorp Ltd (Multisys Trade Mark)* [2012] R.P.C. 14 (‘APS’), also the *Mr Chippy* case AKA *Stannard v Reay* [1967] RPC 589, whereby ‘Mr Chippy’ was used for a mobile fish and chip van on the Isle of Wight for 3 weeks, and this was held enough use to create a protectable goodwill. He also referred me to *Redwood Tree Services v Apsey t/a Redwood Tree Surgeons* [2011] EWPC 14 where it was decided that small localised goodwill with a turnover of less than £100,000 per annum was sufficient. All of these cases were at the lower end of the scale for a business to have accrued protectable goodwill under a name or sign. In response to this, Mr Purvis pointed out that the amount of evidence that would be required to establish goodwill under a highly distinctive term or name cannot be equated with the amount of evidence and trading that would be required to establish that a descriptive name had obtained a secondary meaning.

81. There are many authorities which discuss the distinctiveness/descriptiveness of a sign being relied upon for the purposes of passing off. In *Office Cleaning Services Limited v Westminster Window & General Cleaners Limited* [1946] 63 RPC 39, Lord Simonds stated that:

“Where a trader adopts words in common use for his trade name, some risk of confusion is inevitable. But that risk must be run unless the first user is allowed unfairly to monopolise the words. The court will accept comparatively small differences as sufficient to avert confusion. A greater degree of discrimination may fairly be expected from the public where a trade name consists wholly or in part of words descriptive of the articles to be sold or the services to be rendered.”

82. More recently it was stated in *Phones 4u Ltd v Phone4u.co.uk. Internet Ltd* [2006] EWCA 244 (Civ), Jacob L.J. that:

“34. The judge also thought the “descriptiveness” of the name affected the question of whether it had a goodwill. But the name is not descriptive in the sense that anyone would describe a business or shop selling mobile phones as a “Phones 4u” business or shop. It is that sort of name which tells you what the business is, but is also obviously intended to be an invented name to denote a particular business. True it is that it is not particularly inventive—“4u” was a bit in vogue—the sort of thing others might well want to use. For that reason it would be unlikely to be accepted for registration as a trade mark without some proof of acquired distinctiveness. But distinctiveness for trade mark registration purposes is not the same concept as descriptiveness—it requires more. I think the judge was wrong to say, as he did:

“The phrase ‘Phones 4u’ is not inherently distinctive. It is a descriptive phrase, although not wholly descriptive in that I accept that it is more likely to acquire distinctiveness through use than a wholly descriptive expression. Nevertheless, there is an onus on the Claimants to satisfy me that it had become distinctive through use.”

This is the language of distinctiveness for trade mark registration, not that for testing whether a goodwill has been established.”

A possibly more apt decision may be the *Oven Chips*¹¹ judgment which addressed the question of whether ‘OVEN CHIPS’ was distinctive of the plaintiff’s business for chips which were to be placed in the oven to cook. In that instance, ‘OVEN CHIPS’ was considered to be wholly descriptive and no amount of use could turn the words into a distinctive sign.

83. In the present case, the evidence clearly shows that the words ‘TAILOR & CUTTER’ as being used descriptively of tailoring and cutting services. Mr St Quinton

¹¹ *McCain International Limited v Country Fair Foods Limited and Another* [1981] R.P.C. 69 (COA)

argues that the unusual juxtaposition of the words 'TAILOR' and 'CUTTER' result in it being distinctive for the services in question. As evidenced above, the dictionary definitions of the words 'TAILOR' and 'CUTTER' mean 'a person who makes, repairs or alters outer garments, esp. menswear' and 'a person or thing that cuts esp. 'a person who cuts cloth for clothing' respectively. I do not accept that juxtaposing 'TAILOR' and 'CUTTER' makes the combination unusual or adds anything which could be considered fanciful. In fact, the evidence shows numerous examples of 'TAILOR & CUTTER' being used in combination to describe a person that is, or a business which provides, a tailor and cutter. For example, the extract from the tailoring company Davies and Son refers to one of its team members, Mr Bennett, as a 'master tailor and cutter'. Further, the Government apprenticeship advertisement refers to 'Bespoke Tailors and Cutters' and the extract from the tailors Malcolm Plews describe him as a 'veritable master tailor and cutter'. All of these are examples of TAILOR AND CUTTER being used in a descriptive manner for tailoring. It is true that some of these references postdate the relevant date. However, tailor and cutter are long established terms the meaning of which is not likely to have changed for many years.

84. At this point it is important to note that one is assessing whether 'TAILOR & CUTTER' was distinctive of Mr Jackson and the joint applicants business at the relevant date. Simply operating a shop under a name which describes the type of trade carried on in the shop is not enough to show the name has acquired a distinctive character. In principle, it is no different to operating a fruit and veg' shop under the name 'Greengrocer'. No amount of such use would make the mark distinctive. Instead, customers are likely to rely on the name of the merchant to identify the business. The fact that there are far fewer tailor and cutters than greengrocers makes no difference to this.¹²

85. Mr St Quinton argues that since the telephone numbers have remained the same then this is an indication of a continued business. There isn't any doubt that a business existed. Though this business is best described as being modest in scale

¹² Wholly descriptive names do not become distinctive simply because there are only a limited number of users of the name: see *Bach Flower Remedies* [2000] RPC 513

providing a very limited number of (mainly) suits. As stated in the Oven Chips case, use of descriptive signs places a greater burden on the applicant for invalidity than that for an inherently distinctive sign.

86. Mr St Quinton argues that the instances of confusion¹³ clearly show that 'Tailor and Cutter' are perceived as a brand and distinctive of a business. I shall address the instances of confusion later in this decision. However, I do not agree that they support the term 'Tailor and Cutter' as being distinctive of Mr Jackson and the joint applicants' tailoring services. The consumers concerned became aware of Tailor and Cutter shirts and ties only after they purchased such goods from an Asda's supermarket.

87. Mr St Quinton argues that the evidence filed by Wal-Mart, which is aimed at demonstrating 'Tailor & Cutter' is descriptive, in fact does the opposite. The premise of this argument is that Mr Brierley clearly carried out a global search of databases which include reference to the term 'tailor and cutter' but none of the hits were a) recent and b) in the UK. For example, exhibit APB4 to Mr Brierley's witness statement makes reference to the Tailor and Cutter magazine which ceased publication from 1971 and many exhibits originate from Australia and America.

88. The dictionary definitions for the word 'TAILOR' is 'a person who makes, repairs or alters outer garments, esp. menswear' and 'CUTTER' is defined as 'a person or thing that cuts esp. a person who cuts cloth for clothing'. Therefore, applying the dictionary definition of the words does make them descriptive of a person who would cut and then make clothing. The dictionary definitions of words do provide their literal meanings, however this is not the test. The test is the perception of the sign by the relevant public and whether use of such a sign has made it distinctive of the applicant, i.e. that it has developed a secondary meaning. Having considered the evidence, I find that the evidence provided does not sufficiently demonstrate that it has overcome the more difficult task of establishing sufficient reputation and goodwill¹⁴ to show that the term TAILOR & CUTTER had become distinctive of Mr

¹³ Exhibits AJ21 and AJ22

¹⁴ Diageo v Intercontinental Brands [2011] RPC 2

Jackson and the joint applicants' business. As stated by Mr Purvis, when you calculate the turnover to the cost of an individual suit, this is (at best) one suit per week. The advertising material submitted by Mr Jackson and T&C joint applicants is little more than Yellow pages advertisements and a limited number of brochures. The evidence does not overcome the burden placed upon Mr Jackson and T&C joint applicants, either individually or collectively, to show that TAILOR & CUTTER had become distinctive of their tailoring business. It seems to sit squarely in the scenario outlined in the *Oven Chips* decision whereby if a trader decides to use descriptive words as its trade name then some risk of confusion will occur.

89. In this instance, it appears to me that it is simply a case of a business using a name which is wholly descriptive of tailoring services and then being left in the consequential position of not being able to prevent others for using the same sign.

90. Since I have concluded that the applicant has failed to establish that TAILOR & CUTTER was distinctive of any goodwill that existed at the relevant date, the passing off case has fallen at the first hurdle and the section 5(4)(a) claim fails. Ordinarily I am not required to consider misrepresentation. However, if I am found to be wrong and there is a protectable goodwill in TAILOR & CUTTER for tailoring services, I would have inevitably have found there to be misrepresentation which is likely to have resulted in damage to the goodwill. The section 5(4)(a) claim would then have succeeded.

Is there anything in the get up that would make it distinguishable to the applicant or that it has developed a secondary meaning?

91. Mr St Quinton argued that the term cutter may be known amongst aficionados of very high-end Saville Row tailoring, but generally it is not a well known term and therefore the unusual juxtaposition of Tailor and Cutter has distinguishing capabilities. I do not accept this argument. Whilst many consumers may not know the precise role of a cutter it is clear that when used alongside tailor, its ordinary meaning would be that they also cut the cloth, i.e. the cutter.

Instances of confusion

92. Exhibits AJ21 and AJ22 to Mr Jackson's witness statement are examples of what he claims to be instances of deception. Further, he provides a log¹⁵ of incidents whereby members of the public have mistakenly believed that there was a connection between his companies and Asda.

93. With regard to the email instances of confusion, I do not consider these to be of assistance. Whilst I accept the veracity of the emails, I am not persuaded that even if goodwill had existed, a substantial number of the relevant class of consumers would be deceived. I consider the first email from Mr Wilson to be an instance of confusion which will occur only amongst a very few consumers. With regard to the second email, since Mr Edwards was observing that 'Asda have a brand of Tailor & Cutter...this is not good for you or your brand', he was not deceived that they originate from the same undertaking. The same rationale can be applied to many of the 'incidents' that Mr Jackson refers to at exhibit AJ20 since many are sarcastic remarks.

OUTCOME

94. The opposition under section 5(4)(a) claim fails.

FALL-BACK POSITION

95. At this point I recall that if I am found to be incorrect insofar that Mr Jackson and joint T&C applicants, either collectively or individually, have the requisite goodwill, and TAILOR & CUTTER was distinctive of the goodwill in that business, then it would have followed that there was a likelihood of misrepresentation which would have (or was likely to) lead to damage. Prior to the hearing, Mr Purvis, through his instructing attorney, suggested the following amended specifications for its registrations:

¹⁵ Exhibit AJ20

- 1) Clothing, footwear, headgear; but not including bespoke clothing, or;
- 2) Ready-to-wear clothing; footwear; headgear.

96. The rationale for the proposed amendments is that any goodwill accrued by Mr Jackson and T&C joint applicants would have been based on a narrow business which traded on a small scale, namely bespoke tailoring. If I were to have found that there was a protectable goodwill under the sign, I agree with Mr Purvis that the goodwill would be on a very small scale and relate exclusively to a bespoke tailoring business. The amendment '*clothing, footwear, headgear; but not including bespoke clothing*' would have been sufficient to overcome the invalidation actions. This is because it is clear that if there was protectable goodwill under the sign it would have been in respect of bespoke tailoring services. The notional misrepresentation and damage would have been caused by the use of Tailor & Cutter by Wal-Mart for clothing, footwear, headgear per se, which includes use of the mark in relation to bespoke clothing sold in the area in which the Mr Jackson and T&C joint applicants trade. However, in view of the narrow and specialised field of activity and the very high degree of descriptiveness of the name TAILOR & CUTTER in relation to that business, any misrepresentation and potential damages could have been avoided by the proposed amendment.

DECISION - OPP 407960

97. I now turn to the opposition filed by Wal-Mart against T&C (Cambridge) Limited's application for the mark 'TAILOR & CUTTER' and 'TAILOR AND CUTTER' (series of two). The opposition is based on its trade mark registration no. 3003551 for the mark TAILOR & CUTTER for Class 25 '*Clothing, footwear, headgear*'.

The law

98. The opposition is based on sections 5(1), 5(2)(a) and 5(2)(b) of the Act. For reasons which will become apparent, I shall first address the sections 5(1) and 5(2)(a) claims. The relevant sections of the Act state:

“5. - (1) - A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

(2) A trade mark shall not be registered if because –

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or

(b)...

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

Comparison of marks

99. The respective trade marks are shown below:

Earlier trade mark	Contested trade mark
TAILOR & CUTTER	TAILOR & CUTTER TAILOR AND CUTTER (series of two)

100. Whilst one of the contested marks includes an ampersand, this is a commonly used representation for the conjunction ‘and’. I consider this difference between the marks to be so insignificant that it may go unnoticed by the average consumer.

Therefore, the marks are identical.

Comparison of goods

101. In the judgment of the Court of Justice of the European Union in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

102. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

Opponent's goods	Applicant's goods
<p><i>Class 25: Clothing, footwear, headgear</i></p>	<p><i>Class 14: Jewellery; bracelets, chains, cufflinks, tie-bars; scarf rings, pendants, clips, brooches, pins; buckles; watches, clocks, parts and fittings for watches and clocks including watchstraps; key rings, key holders made of precious metals.</i></p> <p><i>Class 25: Clothing, footwear, headgear</i></p>

Class 14

103. With regard to ‘*cufflinks, tie-bars; scarf rings, clips, pins*’ it is clear that the nature, purpose and methods of use of such items are quite different from clothing. However, there is a reasonably clear aspect of complementarity between these goods and certain items of clothing. For example, cufflinks on the one hand, and shirts on the other, and, also, between tie-pins and tie-bars on the one hand, and ties on the other. A tiepin/tie-bar is not, however, complementary to shirts (or any other clothing item) and a cuff-link is not complementary to a tie (or any other clothing item). Where this complementarity exists, it is clear that it is of the type of relationship whereby the consumer would expect the same undertaking to be responsible for both, and both will be sold next to each other. Therefore, to this limited extent, there is similarity to a low degree.

104. In *Compagnie des montres Longines, Francillon SA v OHIM*, Case T-505/12, the General Court rejected the argument that sunglasses, jewellery and watches were similar to clothing. The court stated that:

“46 In that regard, it must be stated at the outset that the goods which have to be compared in the present case, namely, on the one hand, the ‘optical sunglasses’ and ‘clothing and footwear’ in, respectively, Classes 9 and 25 of the Nice Agreement and, secondly, the various horological and jewellery goods, listed in paragraph 6 above, in Class 14 of that agreement, belong to adjacent market segments.

47 It may also be stated, by analogy with what the Court held in the context of an assessment relating to Article 8(5) of Regulation No 207/2009 in the case which gave rise to the judgment of 27 September 2012 in *El Corte Inglés v OHIM — Pucci International (Emidio Tucci)*, T-373/09, EU:T:2012:500, paragraph 66, that, even though those categories of goods are different, each of them includes goods which are often sold as luxury goods under the famous trade marks of renowned designers and manufacturers. That fact shows that there is a certain proximity between the goods at issue, in particular in the luxury goods sector.

48 Likewise, the Court held, still in the context of an assessment relating to the provision referred to in paragraph 47 above, in paragraph 79 of its judgment of 27 September 2012 in *Pucci International v OHIM — El Corte Inglés (Emidio Tucci)*, T-357/09, EU:T:2012:499, that, in the luxury items sector, goods like glasses, jewellery and watches are also sold under the famous trade marks of renowned designers and manufacturers and that clothing manufacturers are therefore turning towards the market for those goods. The Court deduced from that there was a certain proximity between the goods at issue.

49 However, notwithstanding the fact that the goods covered by the trade mark application and those protected by the earlier mark, which are referred to in paragraph 46 above, belong to adjacent market segments, it must, in the first place, be held that the Board of Appeal did not err in stating that they differed in their nature, their intended purpose and their method of use.

50 First, the raw materials from which they are manufactured are different, except for some similarities between certain materials which may be used both in the manufacture of optical sunglasses and for certain horological goods or jewellery, such as glass.

51 Secondly, clothing and footwear in Class 25 are manufactured to cover, conceal, protect and adorn the human body. Optical sunglasses are above all produced to make it easier to see, to provide users with a feeling of comfort in certain meteorological conditions and, in particular, to protect their eyes from rays of sunlight. Watches and other horological goods are designed, *inter alia*, to measure and indicate the time. Lastly, jewellery has a purely ornamental function (see, to that effect, judgment in *nollie*, cited in paragraph 41 above, EU:T:2010:114, paragraph 33 and the case-law cited).

52 In the second place, it must be pointed out that as the nature, intended purpose and method of use of the goods at issue are different, they are neither in competition with each other nor interchangeable.

53 The applicant has not shown that it is typical, notwithstanding the abovementioned differences, for a consumer who, for example, intends to buy

himself a new watch or some jewellery, to decide, suddenly, to buy himself, on the contrary, clothing, footwear or optical sunglasses, and vice versa.

54 In that regard, in particular, it must also be stated that the applicant has not proved its claim that, in the luxury and fashion sector, it is generally the trade mark and its prestige among consumers that motivate the consumer's decision to purchase a specific item and not the actual necessity to purchase that item, inter alia for its functionalities and to fulfil a very specific need. Likewise, it is necessary to reject as not proved the applicant's claim that, as the appearance and value of the goods prevail over other factors relating to their nature, consumers in the sector concerned are principally in search not of specific goods, but of satisfaction for their 'hedonistic needs' or that they seek the instant gratification generated by an impulse purchase.

55 Moreover, it must be stated that to accept that such claims are well-founded would be tantamount, in essence, to rendering irrelevant any differentiation between goods which belong to the luxury sector and are protected by the respective marks, since the applicant's theory relating to the impulse purchase aimed at the instant gratification of consumers leads to the conclusion that a likelihood of confusion may actually exist irrespective of the goods concerned, on the sole condition that they all fall within that sector. Such an approach, by which the applicant in actual fact alleges that all the goods at issue are interchangeable, is manifestly contrary to the principle of speciality of marks which the Court must take into account in its analysis in accordance with Article 8(1)(b) of Regulation No 207/2009 and would improperly extend the area of protection of trade marks. For the same reasons, it is necessary to reject as irrelevant the applicant's claim that the goods are interchangeable inasmuch as each of them may be given as a gift and the consumer impulsively chooses one or other of them. To accept such a vague connection would lead to holding that goods which are manifestly different in their nature and intended purpose are similar.

56 What is more, it must be stated that the relevant market within which the abovementioned goods fall cannot be limited to the 'luxury' or 'haute couture' market segment alone and that specific significance cannot, in addition, be

attributed to that market segment in the present case, since the categories of goods protected by the marks at issue are defined in a manner which is sufficiently broad to include both 'consumer' goods falling within a generally affordable price range and certain 'inexpensive' goods. The applicant has not claimed, in relation to the 'basic' goods falling within those market segments, that they are also purchased by consumers acting in an impulsive and hedonistic manner, with the result that those consumers may indiscriminately replace some goods with others.

57 In the third place, it must be pointed out that, by its other arguments, the applicant attempts, in essence, to establish a complementary connection between the goods at issue.

58 It must be borne in mind that, in accordance with the case-law, complementary goods or services are those which are closely connected in the sense that one is indispensable or important for the use of the other in such a way that consumers may think that the same undertaking is responsible for manufacturing those goods or for providing those services. By definition, goods intended for different publics cannot be complementary (see, to that effect, judgment in *Emidio Tucci*, cited in paragraph 48 above, EU:T:2012:499, paragraph 50 and the case-law cited).

59 Furthermore, according to the case-law, aesthetic complementarity between goods may give rise to a degree of similarity for the purposes of Article 8(1)(b) of Regulation No 207/2009. Such aesthetic complementarity must involve a genuine aesthetic necessity, in the sense that one product is indispensable or important for the use of the other and consumers consider it ordinary and natural to use those products together. That aesthetic complementarity is subjective and is determined by the habits and preferences of consumers, to which producers' marketing strategies or even simple fashion trends may give rise (see judgment in *Emidio Tucci*, cited in paragraph 48 above, EU:T:2012:499, paragraph 51 and the case-law cited).

60 However, it is important to point out that the mere existence of aesthetic complementarity between the goods is not sufficient to conclude that there is a

similarity between them. For that, the consumers must consider it usual that the goods are sold under the same trade mark, which normally implies that a large number of the producers or distributors of the goods are the same (see judgment in *Emidio Tucci*, cited in paragraph 48 above, EU:T:2012:499, paragraph 52 and the case-law cited).

105. In view of the guidance set out in *Compagnie* I find that there is no similarity between the opponent's class 25 goods and the applied for '*jewellery; bracelets, chains, pendants, brooches*'. They are dissimilar.

106. With regard to *buckles; watches, clocks, parts and fittings for watches and clocks including watchstraps; key rings, key holders made of precious metals* I do not consider any of these to be similar to Wal-Mart's clothing, headgear and footwear. Since the buckles that have been applied for are included in Class 14, they are buckles for watches rather than for shoes, clothing or footwear, the buckles for which are correctly classified in class 26. Therefore, I consider '*buckles*' to be a type of watch accessory which, along with watches themselves, are not similar to the applied for class 25 goods.

Class 25

107. The respective goods are identical.

Likelihood of confusion

108. Where there is no similarity between the goods, a likelihood of confusion cannot exist and the opposition therefore fails against such goods.

109. Where the marks and goods are identical a conclusion that there is a likelihood of confusion is inevitable. Therefore, the opposition succeeds against all of the Class 25 goods.

110. With regard to the Class 14 goods which I have found to be similar to a low degree I bear in mind that the earlier mark is considered to be of low distinctive

character. Nevertheless, since a lower degree of similarity between the marks may be offset by a greater degree of similarity in the marks¹⁶ (in this case identical marks), I find that there is also a likelihood of confusion for these goods.

Outcome

111. The opposition under section 5(1) of the Act is successful in respect of the Class 25 goods. The section 5(2)(a) claim is successful against some of the Class 14 goods and accordingly it shall be refused for all of the applied for goods, except for:

‘Jewellery; bracelets, chains, pendants, brooches; buckles; watches, clocks, parts and fittings for watches and clocks including watchstraps; key rings, key holders made of precious metals’

DECISION – SECTIONS 3(1)(b), (c) and (d)

112. Since the opposition based on section 5 claim against T&C (Cambridge) Limited’s application has not been entirely successful, I must now consider Wal-Mart’s claim under section 3(1)(b), (c) and (d) of the Act in respect of the following goods:

‘Jewellery; bracelets, chains, pendants, brooches; buckles; watches, clocks, parts and fittings for watches and clocks including watchstraps; key rings, key holders made of precious metals’

113. These provisions prevent, respectively, registration of trade marks which are “...devoid of any distinctive character¹⁷”, “...consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services¹⁸” or “consist exclusively of

¹⁶ *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97 at paragraph 17

¹⁷ Section 3(1)(b)

¹⁸ Section 3(1)(c)

signs or indications which have become customary in the current language or in the bona fide and established practices of the trade¹⁹”.

114. Even if a mark falls foul of any of these provisions, there is a proviso to section 3(1) which means that a registration shall not be refused if the trade mark has acquired a distinctive character through use. There is no explicit claim to having acquired distinctive character through use and T&C Cambridge Ltd. However, it has submitted evidence in support of its section 5(4)(a) of the Act. Even if they had intended on relying on such evidence to support a claim for acquired distinctiveness for the class 14 goods which have not been successfully opposed, it would have been dismissed. The evidence does indicate that it sells some jewellery items but there are no sales figures, advertising costs or details about market share²⁰. It is clear that it had not acquired distinctive character.

115. It must be borne in mind that these grounds are independent and have differing general interests. It is possible, for example, for a mark not to fall foul of section 3(1)(c), but still be objectionable under section 3(1)(b) of the Act. In *SAT.1 SatellitenFernsehen GmbH v OHIM*, Case C-329/02 P, the Court of Justice of the European Union (“CJEU”) stated that:

“25. Thirdly, it is important to observe that each of the grounds for refusal to register listed in Article 7(1) of the regulation is independent of the others and requires separate examination. Moreover, it is appropriate to interpret those grounds for refusal in the light of the general interest which underlies each of O-501-17 them. The general interest to be taken into consideration when examining each of those grounds for refusal may or even must reflect different considerations according to the ground for refusal in question (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-0000, paragraphs 45 and 46).”

¹⁹ Section 3(1)(d)

²⁰ See the Court of Justice of the European Union provided guidance in *Windsurfing Chiemsee*, Joined cases C-108 & C-109/97, about the correct approach with regard to the assessment of the acquisition of distinctive character through use.

Section 3(1)(c)

116. I shall begin with the section 3(1)(c) claim. The case law under section 3(1)(c) (corresponding to article 7(1)(c) of the EUTM Regulation, formerly article 7(1)(c) of the CTM Regulation) was summarised by Arnold J. in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch):

“91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in *Agencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40 , p. 1), see, by analogy, [2004] ECR I-1699 , paragraph 19; as regards Article 7 of Regulation No 40/94 , see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C-191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18 , paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461 , paragraph 24).

36. ... due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94 . Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia , *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44 , paragraph 45, and *Lego Juris v OHIM* (C-48/09 P) , paragraph 43).

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services (see, to that effect, *OHIM v Wrigley* , paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94 , it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32; *Campina Melkunie* , paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that

regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down in Article 3 of Directive 89/104, *Koninklijke KPN Nederland*, paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94, the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56)."

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: see *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32] and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97]."

117. By virtue of the dictionary definitions alone, the words TAILOR & CUTTER are descriptive of persons who cut, trim and amend articles of clothing. However, they have no literal meaning in relation to '*Jewellery; bracelets, chains, pendants, brooches; buckles; watches, clocks, parts and fittings for watches and clocks including watchstraps; key rings, key holders made of precious metals*'.

118. Therefore, from a prima facie perspective, the mark TAILOR & CUTTER does not describe or strongly allude to any characteristic of the subject goods. Further, there is no evidence filed to support that the mark TAILOR & CUTTER is used in connection with such goods. Finally, I note that there was no meaningful arguments lodged in respect of the mark being descriptive for the class 14 goods listed above.

119. I have no hesitation in dismissing the section 3(1)(c) claim.

Other section 3(1) grounds

120. Turning to the section 3(1)(b) claim, this is the equivalent of article 7(1)(b) of the Regulation, the principles of which were summarised by the CJEU in *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG* (C-265/09 P) as follows:

“29..... the fact that a sign is, in general, capable of constituting a trade mark does not mean that the sign necessarily has distinctive character for the purposes of Article 7(1)(b) of the regulation in relation to a specific product or service (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 32).

30. Under that provision, marks which are devoid of any distinctive character are not to be registered.

31. According to settled case-law, for a trade mark to possess distinctive character for the purposes of that provision, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings (*Henkel v OHIM*, paragraph 34; Case C-304/06 P *Eurohypo v OHIM* [2008] ECR I-3297, paragraph 66; and Case C-398/08 P *Audi v OHIM* [2010] ECR I-0000, paragraph 33).

32. It is settled case-law that that distinctive character must be assessed, first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the perception of them by the relevant public (*Storck v OHIM*, paragraph 25; *Henkel v OHIM*, paragraph 35; and *Eurohypo v OHIM*, paragraph 67). Furthermore, the Court has held, as OHIM points out in its appeal, that that method of assessment is also applicable to an analysis of the distinctive character of signs consisting solely of a colour per se, three-dimensional marks and slogans (see, to that effect, respectively, Case C-447/02 P *KWS Saat v OHIM* [2004] ECR I-10107, paragraph 78; *Storck v OHIM*, paragraph 26; and *Audi v OHIM*, paragraphs 35 and 36).

33. However, while the criteria for the assessment of distinctive character are the same for different categories of marks, it may be that, for the purposes of applying those criteria, the relevant public's perception is not necessarily the same in relation to each of those categories and it could therefore prove more difficult to establish distinctiveness in relation to marks of certain categories as compared with marks of other categories (see Joined Cases C-473/01 P and C-474/01 P *Proctor & Gamble v OHIM* [2004] ECR I-5173, paragraph 36; Case C-64/02 P *OHIM v Erpo Möbelwerk* [2004] ECR I-10031, paragraph 34; *Henkel v OHIM*, paragraphs 36 and 38; and *Audi v OHIM*, paragraph 37).”

121. I do not consider that this ground of opposition adds much to Wal-Mart's claim under section 3(1)(c). This is because the claim is based upon the mark lacking distinctiveness due to it being descriptive. Thus, this ground stands or falls with the section 3(1)(c) claim, which for the reasons set out above has been dismissed. For the same reasons I do not consider it necessary to make a formal finding under section 3(1)(d). However, for the sake of completeness I record that there is no evidence that, at the relevant date, TAILOR & CUTTER was customary in the current language or in the bona fide and established practices of the trade mark in the class 14 goods set out in paragraph 111 above.

SECTION 3 OUTCOME

122. All of the Section 3 claims are dismissed and the opposition fails.

OPPOSITION NUMBERS 406281-3

123. The final issue which requires very brief attention are the oppositions filed by T&C (Cambridge) Limited against the following applications, all in the name of Wal-Mart.

Application No.	Mark	Class 25 goods
3139254	TAILOR & CUTTER	Clothing, footwear, headgear

3139258	 <p>(series of two)</p>	Clothing, footwear, headgear
3139259	 <p>(series of two)</p>	Clothing, footwear, headgear

124. The oppositions are all based on T&C's earlier trade mark registration no. 3122696 for the mark 'TAILOR & CUTTER' and 'TAILOR AND CUTTER' (series of two) which following opposition number 407960 now covers Class 14 '*Jewellery; bracelets, chains, pendants, brooches; buckles; watches, clocks, parts and fittings for watches and clocks including watchstraps; key rings, key holders made of precious metals*'.

125. In order for an opposition under section 5(2)(b) to succeed it is necessary for there to be some similarity between the respective goods or services. For the reasons set out in paragraphs 102 to 105 there is no similarity. Therefore, for this reason the section 5(2)(b) claim under opposition numbers 406821, 406282 and 406283 are dismissed.

126. With respect to the opponent's section 5(4)(a) claim against Wal-Mart's applications for the same reasons set out in invalidity numbers 501557 and 501558 the claim is dismissed. I acknowledge that the relevant date in these oppositions is later than the invalidation claims though this does not alter the outcome.

OVERALL OUTCOME

127. The opposition has succeeded against the following goods:

Class 14: *'Cufflinks, tie-bars; scarf rings, clips; pins'*

Class 25: *'Clothing, footwear, headgear'*

128. Therefore, the application shall (subject to appeal) proceed to registration for the following goods:

Class 14 *'Jewellery; bracelets, chains, pendants, brooches; buckles; watches, clocks, parts and fittings for watches and clocks including watchstraps; key rings, key holders made of precious metals'*

COSTS

129. Wal-Mart enjoys a larger degree of success than Mr Jackson and T&C joint applicants. It is therefore entitled to a contribution towards its costs but reduced to reflect the limited success. In the circumstances I award Wal-Mart the sum of £700 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a statement and considering the other side's statement: £200

Preparing evidence and considering the other side's evidence: £300

Preparing for and attending a hearing: £200

Total: £700

130. I therefore order Andrew Campbell Jackson, Tailor and Cutter Limited and Tailor and Cutter (Cambridge) Limited (jointly) to pay Wal-Mart, Inc. the sum of £700.

The above sum should be paid within 14 days of the expiry of the appeal period or, if there is an appeal, within 14 days of the conclusion of the appeal proceedings.

Dated this 22nd day of May 2018

Mark King

For the Registrar

The Comptroller-General